

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: Lawrence T. Woodlock, Senior Commission Counsel
Luisa Menchaca, General Counsel

Subject: Update: Scheduling for Discussion in May

Proposed Regulation 18530.3 – Preemption of State Rules for Reporting Mixed State and Federal Party Expenditures;

Proposed Regulation 18534 – Expenditures For or Against Candidates for State Elective Office, Required Bank Accounts.

Date: February 1, 2006

Last year, staff proposed a new regulation (18530.3) to codify rules for reporting certain campaign receipts and expenditures by California political party committees. The regulation was intended to answer questions that had arisen over the prior year on the often complex interaction between the state and federal laws governing these committees. Representatives of two political party committees persuaded the Commission that the proposed regulation might be preempted by federal law, and the Commission directed staff to request an advisory opinion from the Federal Election Commission (“FEC”) before proceeding further. The Commission approved the text of the advice request at its December meeting. As shown in the correspondence attached hereto, the FEC declined to provide an advisory opinion because the regulation has not yet been adopted, and its terms are hypothetical at present. Staff accordingly proposes to resume the rulemaking process and to return for prenotice discussion in July, with an option to stay the effect of the regulation until the FEC has an opportunity to state its position on federal preemption.

Also at its December meeting, the Commission heard prenotice discussion of proposed regulation 18534. That regulation was drafted after an Enforcement Division investigation into events surrounding the 2002 statewide election, which brought to light a number of admitted violations of section 85303 (governing limits on contributions to candidates) by county central committees and their treasurers. To deter such public harm in the future, regulation 18534 would require committees to keep separate bank accounts for deposit of contributions that will be used for supporting or opposing candidates for elective state office, as distinct from contributions intended to be used for all other purposes. The draft regulation also contained rules to ensure that funds deposited into a “non-candidate support account” could not be re-dedicated to candidate support by transfer to another committee. The Commission opted to bring this matter back for a second prenotice discussion, and staff proposes to do so at the July meeting for the convenience of the public, since parties interested in proposed regulation 18530.3 are likely to be interested as well in proposed regulation 18534.

